IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 300 of 1999

in

SPECIAL CIVIL APPLICATIONNo 5837 of 1997

For Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DY EXECUTIVE ENGINEER

Versus

CHAMAR DHANABHAI MAVABHAI

Appearance:

1. LETTERS PATENT APPEAL No. 300 of 1999

MR MUKESH R SHAH for Appellant No.

MR KM PARIKH for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE A.L.DAVE

Date of decision: 16/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. Heard learned counsel for parties. This Letters Patent Appeal is filed against the order dated 22nd February, 1999, passed by the learned Single Judge, dismissing Special Civil Application No.5837 of 1997.

2. The respondent-workman was appointed in service as Typist in 1982. His services were terminated on 15.10.1987, without following the provisions of the Industrial Disputes Act, therefore, Reference (LCG) No.597 of 1990 was filed before the Labour Court, Godhra. The learned Judge found termination of the respondent-workman illegal and in violation of Section 25 of the Industrial Disputes Act, therefore, declared the termination bad and ordered to reinstate the respondent-workman in service with continuity in service and 40% back wages. This impunged order dated 27.2.1997 passed by the Labour Court was challenged by the appellant-petitioner by way of Special Civil Application No.5837 of 1997. The counter petition, i.e. Special Civil Application No.10783 of 1998, was filed by the respondent-workman for implementing the said award. Both the petitions were disposed of by a common order dated 22.2.1999, passed by the learned Single Judge of this Court. The learned Single Judge dismissed Special Civil Application No.5837 of 1999, therefore, counsel for the respondent-workman did not press Special Civil Application No.10783 of 1998 and, accordingly, it was disposed of as not pressed.

3. Learned counsel, Shri Shah, for the appellant-original petitioner was not in a position to seriously challenge the impugned award passed by the Labour Court, which was not disturbed in the writ petition, i.e. Special Civil Application No.5837 of 1997, by the learned Single Judge of this Court. It appears from the order passed by the learned Single Judge dismissing Special Civil Application No.5837 of 1997 that the learned Single Judge has exercised his supervisory jurisdiction under Article 227 of the Constitution, though the petition was filed as a petition under Articles 226 and 227 of the Constitution. Under the circumstances, it would not be possible for this Court to interfere with the concurrent findings recorded by the Labour Court and the learned Single Judge of this Court in this Letters Patent Appeal.

4. When the Labour Court found that the

respondent-workman had completed 240 days and that there was breach of provisions of Section 25 of the Industrial Disputes Act, then, obviously, this Court would not interfere with such award, more particularly, when the learned Single Judge of this Court had not thought it fit to interfere with the finding of the Labour Court in his writ jurisdiction.

5. The only contention which was raised by the learned counsel, Shri Shah, for the appellant was that the order passed by the Labour Court awarding 50% back wages be sliced down to 25% back wages. Considering the facts and circumstances of the case, learned counsel, Shri Parikh, for the respondent almost conceded to this. His submission was that, instead of 40%, at least 30% be awarded. There is hardly marginal difference of 5%.

6. Considering the peculiar facts and circumstances of the case, we are of the considered opinion that the impugned award passed by the Labour Court is required to be modified only to the extent of awarding back wages. The Labour Court has awarded 40% back wages while passing the order of reinstatement. Considering the facts and circumstances, we are of the considered opinion that 25% back wages would serve the interest of justice. In view of this, this Letters Patent Appeal is partly allowed and the impugned award passed by the Labour Court awarding 40% back wages is modified to 25% back wages. Accordingly, the writ petition, i.e. Special Civil Application No.5837 of 1997 is also accepted to that extent only. Rest of the order regarding reinstatement and granting other benefits of service is not interfered with.

7. Learned counsel, Shri Shah, for the appellant shall see to it that, now, the respondent-workman is reinstated in service as per the impugned award passed by the Labour Court, as early as possible.

[B.J. SHETHNA, J.]

[A. L. DAVE, J.]

gt